FDA BACKGROUNDER
CURRENT & USEFUL INFORMATION FROM THE FOOD & DRUG ADMINISTRATION

The New Federal Tobacco Rule: A Retailer's Guide to the Age and ID Requirements

The Rule

In the Federal Register of August 28, 1996, the Food and Drug Administration (FDA) published a final rule to restrict the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents. The rule is intended to decrease the number of children and adolescents who use cigarettes and smokeless tobacco and, by doing so, to reduce the death and disease caused by tobacco products. As a retailer, the final rule creates legally binding requirements or obligations on you.

As of February 28, 1997, Federal law prohibits retailers from selling cigarettes, cigarette tobacco, or smokeless tobacco to anyone under the age of 18. (The age may be higher in your state.) Additionally, retailers must request to see a customer's photo ID bearing the customer's date of birth before selling cigarettes, cigarette tobacco, or smokeless tobacco to anyone who has not yet reached his or her 27th birthday.

WHAT and WHO is Covered by the Rule?

WHAT— the rule covers three kinds of products that contain nicotine:

- Cigarettes
- Cigarette tobacco
- Smokeless tobacco (Smokeless tobacco includes loose leaf chewing tobacco, plug chewing tobacco, twist chewing tobacco, moist snuff, and dry snuff.)

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The rule does NOT cover cigars, little cigars, or pipe tobacco.

WHO— the rule covers three classes of people or businesses who make, distribute or sell cigarettes, cigarette tobacco, or smokeless tobacco:

- Manufacturers
- Distributors
- Retailers

Am I a Retailer?

You are a retailer if you sell cigarettes or smokeless tobacco to individuals for their personal consumption. For example, retailers include, but are not limited to, grocery stores, pharmacies, convenience stores, gas stations, bars, restaurants, and other businesses that sell cigarettes or smokeless tobacco. You are also a retailer if you own or have a vending machine in your store.

Answers to Questions Asked by Retailers

How do I comply with the rule?

In brief, you will comply with the provisions that will become effective in February 1997 if you:

- Do not sell cigarettes or smokeless tobacco to anyone under 18;
  and
- Ensure that anyone buying cigarettes or smokeless tobacco is at least 18 years old or older. This means you must check a customer's ID for the buyer's picture and date of birth if that person is under 27 years old.

Source: https://www.industrydocuments.ucsf.edu/docs/lmbn0000

Am I responsible for my employees?

Yes. If one of your employees violates the rule, you risk civil money penalties or other sanctions. Therefore, it is important for you to tell your employees that, as of February 28, 1997, they must not sell cigarettes or smokeless tobacco to anyone under 18, and that they must check a photo ID for anyone under 27. You may also want to clarify for your employees the actions *you* may take in the event that he or she violates the rule.

How do I check proof of age?

The rule requires you to ensure that your customer is at least 18 by checking his or her ID for the customer's photo *and* date of birth. The regulation does not specify the type of ID that you may accept, but the most reliable forms of ID cards are:

- Drivers' licenses
- Military identification cards, if they have the customer's photo and date of birth
- Passports

Do I have to check everyone's ID?

Guessing someone's age by his or her looks can be difficult. To protect you and your customers — especially your underage customers—you must ask for ID from anyone you're not sure about. However, you do not need to ask for ID from every customer every time he or she wants to purchase a tobacco product if you have already verified by means of photo ID that the customer is at least 18. In other words, if you have a regular customer whom you know is 18 or over because he or she has presented a valid ID card in the past, you do not need to ask for proof of age every time the customer wants to buy a tobacco product.

What if I do not comply with the rule?

Throughout the year, unannounced compliance checks, typically involving adolescents under 18, will be conducted to ensure that the regulations are being observed. Retailers found selling to minors risk civil money penalties of $250 or more and could be subject to other sanctions. Retailers reported to have sold cigarettes or smokeless tobacco to someone under 27 without checking their photo ID risk compliance checks being conducted in the future.

Can I get more information?

Yes. You can get the following information by accessing the Internet, or by writing or calling FDA:

- "*Children and Tobacco: A Retailer's Guide to the New Federal Regulations*" is a brochure that provides a quick reference to the provisions that affect retailers.
- "*The New Federal Tobacco Rule: Provisions Affecting Retailers and Their Employees,*" is a one-page description of the regulations affecting retailers and their employees.
- "*The Small Entities Compliance Guide on: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897)*" is a 50-page, detailed explanation of the rule as it relates to manufacturers, distributors, and retailers. Call (301) 827-3373.

FDA's Internet address: http://www.fda.gov

FDA's mailing address: Office of Policy (HF-23)
Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

FDA's hotline: 1-888-FDA-4KIDS

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